

§ 10.7.5 Other Federal Programs

In addition to the programs already discussed, there are numerous other programs that may provide aide to children and families involved in child welfare proceedings. These include:

- Food Stamps – a means tested entitlement program.¹³³
- The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) – a non-entitlement program that provides nutritional support to low income pregnant women and their children to age 5.¹³⁴
- Child Nutrition Program – funds, among other things, school breakfast and lunch programs.¹³⁵
- Section 8 housing – not an entitlement program, but it provides rental assistance to low income persons.¹³⁶
- The Child Care and Development Block Grant – provides child care assistance to low-income working parents.¹³⁷
- Head Start – a non-entitlement program aimed at providing quality early childhood education and comprehensive services to low-income, pre-school aged children.¹³⁸

§ 10.8 Miscellaneous Federal Statutes

In addition to the child welfare and child well-being legislation discussed above, child welfare lawyers should be aware that other federal statutes may impact your handling of child welfare cases. In this portion of this chapter, we will discuss two statutes of this sort.

§ 10.8.1 Americans with Disabilities Act

The Americans with Disabilities Act (ADA)¹³⁹ was enacted to address the long-standing and pervasive discrimination against persons with physical and mental disabilities.¹⁴⁰ The statute intends to guarantee that persons with disabilities have the same access to services, programs, and activities as persons without disabilities. Thus,

¹³³ Pub. L. No. 88-525; 7 U.S.C. §§ 2011–2036.

¹³⁴ 42 U.S.C. § 1786.

¹³⁵ 42 U.S.C. §§ 1751–1790.

¹³⁶ 42 U.S.C. §§ 1437–13664.

¹³⁷ 42 U.S.C. § 9858.

¹³⁸ 42 U.S.C. §§ 9831–9843a.

¹³⁹ 42 U.S.C. §§ 12101 *et seq.*

¹⁴⁰ 42 U.S.C. § 12101(a)(1).

the ADA requires that in certain circumstances public bodies make reasonable accommodations for persons with qualifying disabilities.¹⁴¹

There are three general areas of concern regarding the application of the ADA to child welfare cases. First, the ADA guarantees that all litigants have reasonable access to legal proceedings.¹⁴² The states must make reasonable accommodations for parents and children with disabilities to ensure that they may participate in the proceedings. This would include such things as physical access to the courthouse and assistive listening devices or sign language interpreters for the deaf.

The second area of concern relates to the substantive application of the ADA to efforts by state child welfare agencies to preserve and reunify families in which child maltreatment has occurred. It appears that the ADA does not directly apply to child welfare cases.¹⁴³ To the extent that the ADA applies in the child welfare context, most courts have held that proceedings involving the termination of parental rights do not constitute "services, programs and activities" within the meaning of the ADA, so the ADA does not act to bar proceedings to terminate parental rights.¹⁴⁴ Some courts have held that the ADA applies to a limited extent to child welfare proceedings.¹⁴⁵ These courts have generally held that if the state has met the "reasonable efforts" requirement it has also met the ADA's "reasonable accommodation" requirement.¹⁴⁶ Although the ADA may apply to the agency's efforts to reunify and the types of services offered, it does not provide a defense to a termination of parental rights action.¹⁴⁷

Finally, the ADA applies to children who are the subject of child protective proceedings to protect them from discrimination based on a disability. For instance, a child care center must make an individualized determination as to whether a particular child's disability should be accommodated by the program.¹⁴⁸

¹⁴¹ See 42 U.S.C. §§ 12131 *et seq.*

¹⁴² See *Tennessee v. Lane*, 541 U.S. 509 (2004) (upholding against Eleventh Amendment immunity attack Title II of ADA requiring that disabled persons have access to courthouses and that their disabilities be accommodated so that they may participate in legal proceedings); see generally Peter Blanck, Ann Wilichowski & James Schmeling, *Disability Civil Rights Law and Policy: Accessible Courtroom Technology*, 12 WM. & MARY BILL OF RTS. J. 825 (2004).

¹⁴³ *In re B.S.*, 166 Vt. 345, 693 A.2d 716, 720 (1997); *State v. Raymond C. (In re Torrance P.)*, 187 Wis. 2d 10, 522 N.W.2d 243 (1994).

¹⁴⁴ *Id.*; see also *Adoption of Gregory*, 434 Mass. 117, 747 N.E.2d 120 (2001); *In re Anthony P.*, 84 Cal. App. 4th 1112, 101 Cal. Rptr. 2d 423 (2000); *Stone v. Daviess County Div. Child. & Fam. Servs.*, 656 N.E.2d 824 (Ind. App. 1995).

¹⁴⁵ See, e.g., *In re Terry*, 240 Mich. App. 14, 610 N.W.2d 563 (2000).

¹⁴⁶ See, e.g., *J.T. v. Arkansas Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997); *In re Welfare of A.J.R.*, 78 Wash. App. 222, 896 P.2d 1302 (1995); *In re Angel B.*, 659 A.2d 277 (Me. 1995); *In Interest of C.M.*, 526 N.W.2d 562 (Iowa App. 1994).

¹⁴⁷ See, e.g., *People v. T.B.*, 12 P.3d 1221 (Colo. App. 2000); *In re Terry*, 240 Mich. App. 14, 610 N.W.2d 563 (2000).

¹⁴⁸ See U.S. Department of Justice, Civil Rights Division, *Commonly Asked Questions About Child Care Centers and the Americans with Disabilities Act* (Oct. 1997), available at www.usdoj.gov/crt/ada/childq&a.htm.